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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**NOTICE OF MOTION NO.1555 OF 2017
IN
SUMMARY SUIT NO.1226 OF 2010**

Surendrasingh M. Gujra ...Plaintiff
vs
Suresh M. Kadam ...Defendant

.....
Mr. Ramesh Jain, for the Plaintiff.

None for the Defendant/Applicant.

.....
CORAM : S.C. GUPTE, J.

DATED : 4 MAY, 2018

P.C. :

. This notice of motion was heard and placed for orders yesterday. Originally, when the motion was heard, orders were not passed, since the Applicant (Defendant) had proposed to offer settlement. On a couple of occasions before yesterday, the Defendant took further time. Yesterday, the matter could not reach and was mentioned and kept on today's board. Today, when the matter is called out, none appears for the Defendant/Applicant.

2. This notice of motion is taken out for setting aside of an ex-parte decree passed in the summary suit. The suit is based on a promissory note. Despite service of writ of summons, the Defendant failed to enter appearance. The matter was, accordingly, placed for ex-parte decree before the Court on 11 March 2011. The Plaintiff relied on the provisions of Order 37 Rule 6(a) of Code of Civil Procedure and also placed on record

documentary material. This Court held the Plaintiff to be entitled for judgment. Accordingly, the suit was decreed with a modification of the rate of interest to 9% per annum on the principal sum from the date of the suit until payment or realization. This ex-parte decree is sought to be set aside on the ground that the writ of summons was not received by the Defendant and he did not know about the suit. There is a delay of over six years in taking out the present notice of motion.

3. The whole basis of the present notice of motion is that there was no service of writ of summons. It is borne out by the record that the writ of summons under Order 37 Rule 2 of the Code of Civil Procedure was duly served on the Defendant. The receipt of the summons by the Defendant is endorsed under his signature on the summons filed with the Court along with the bailiff's report. This summons along with the report containing the signature of the Defendant in acknowledgement of receipt of the summons forms part of the joint affidavit filed by the bailiff and the Plaintiff. When the signature was pointed out to learned Counsel for the Applicant on the last occasion, he could not join issue with the submission that the signature on the reverse of the summons was of the Defendant.

4. In the premises, the very foundation of the present application is undermined by the uncontroverted record of the case. In the premises, there is no merit in the notice of motion.

5. The notice of motion is, accordingly, dismissed. No order as to costs.

(S.C. GUPTE, J.)